TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~112~~ 211

MARIE LOUISE PERRIN AND TRAUTMANN-PERRIN, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 13, 1870.

6.

SUPREME COURT OF THE UNITED STATES.

No. 442.

MARIE LOUISE PERRIN AND TRAUTMANN-PERRIN, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims.

MARIE LOUISE PERRIN, TRAUTMANN-PERRIN, petitioners,
vs.
UNITED STATES.

To the honorable justices of the United States Court of Claims:

The petition of Maria Louise Perrin, whose husband, Trautmann-Perrin, joins with her as a party plaintiff in this behalf, humbly represents that your orator, on the 13th day of July, 1854, was the wife of Trautmann-Perrin, and has ever since been and now is a married woman; that your orator and her husband, on the said 13th day of July, 1854, were subjects of, and owed allegiance to, the Emperor of the French; that at the time of filing this petition your orator and her said husband are naturalized citizens of the United States, residing at Boston, in the State of Massachusetts; that neither your orator or her said husband were at any time citizens of Greytown or owed allegiance to, or claimed protection from, the government thereof; that your orator is the original and true owner of the claim against the United States hereinafter mentioned, and that there has been no assignment of the same or any part thereof to any person or persons whomsoever; that your orator and her said husband have at all times since they became naturalized citizens borne true allegiance to the government of the United States, and that neither of them have ever in any way aided, abetted, or given encouragement to the rebellion against the said government.

And your orator further represents that shortly before the said 13th day of July, 1854, she arrived at San Juan del Norte, or Greytown, Central America, with a valuable invoice of merchandise, where her said husband had preceded her, with the intention of establishing a commercial house in some part of Central America, having previously shipped to that port, because it was free and on the transit to the interior of the five Central American states, a first large invoice of merchandise, which was landed May 1st, 1854; that on the arrival of Madam Perrin with the second invoice, about the middle of June, 1854, Mr. Trautmann-Perrin left Greytown for the interior of Nicaragua,
2 with a variety of samples of their goods, amounting to $1,500, for the purpose of selecting there or in the neighboring republic of Costa Rica, a place in which to locate and open the commercial house hereinbefore mentioned.

And your orator further shows that while she remained alone in Greytown with the balance of the merchandise aforesaid, hourly awaiting the return of Mr. Trautmann-Perrin, her husband, to remove all the property to the interior, on the said 13th day of July, 1854, the said town of San Juan was bombarded and burnt by the United States sloop of war "Cyane," Commander Hollins, and all the merchandise, books, and papers, together with the personal effects of your orator, were wholly destroyed by the said bombardment and burning.

And your orator further shows that, by reason of the destruction of the books and papers aforesaid, it is not now within the power of your orator to make a detailed sworn statement of all the items of the invoices of merchandise which were burned by the destruction of the said town. But your orator shows that the same consisted of fancy dry goods, silks, dress goods, and plated jewelry, of French manufacture, which cost your orator in gold $16,500, and that the said invoices, taken at the actual cost as aforesaid, save $2,600 worth of merchandise sold,

were together, with all our household furniture and personal effects, wholly destroyed on said 13th day of July, 1854, at said Greytown.

And your orator further shows that immediately after the said 13th day of July, 1854, a reclamation was made by your orator, showing all her losses by the destruction of Greytown, properly certified by resident merchants of six different nationalities, the genuineness of which signatures H. B. M's consul at Greytown, in a letter, offered to certify under his official seal; which said original reclamation, with an English translation thereof, is hereto annexed, the same having at the time been forwarded to the home government by the legation of France at Washington, after the commander of the French man-of-war "Acheron," in June, 1855, had been dispatched to San Juan with instructions to ascertain the justice of the French claims and the amount of actual losses, and has now been returned to your orator by the minister of foreign affairs at Paris, at her request, to be used in this proceeding, but unaccompanied by the vouchers obtained when the official investigation took place; that the government of the Emperor afterwards declined to press the claims of French subjects for indemnity; and, as your orator was informed and believes, no action was taken upon this reclamation by the government of the United States.

And your orator further shows that subsequently, on the 10th day of February, 1868, your orator, through her husband, Trautmann-Perrin, made application to Honorable William H. Seward, Secretary of State, for some compensation for the actual losses sustained by her by the destruction of the invoices of merchandise and personal effects hereinbefore mentioned, and fifteen printed copies of said petition and the reply of the honorable Secretary of State are hereto annexed for the information of the honorable justices of the Court of Claims.

And your orator is also informed and believes that the reasons advanced by the government of the United States for their refusal to make general compensation to the sufferers by the destruction of Greytown are not a sufficient answer to the particular claim of your orator to be repaid the sum of $15,075 for the cost value of the invoices of merchandise and of personal effects destroyed by the United States on the said 13th day of July, 1854.

3 Wherefore your orator prays that the facts hereinbefore set forth may be inquired into, and, if they shall be found truly stated, that judgment may be rendered in favor of your orator for the sum of $15,075, as the cost value of the merchandise and amount of personal effects aforesaid, and for such other and further relief as to equity and justice appertain.

And your orator, as in duty bound, will ever pray.

MARIE L'SE PERRIN,
TRAUTMANN-PERRIN,
Boston, Mass.

Claimants' affidavit.

We, Marie Louise Perrin and Trautman-Perrin, on oath do say that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, and that said claimants are justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; and we believe the facts as stated in said petition are true.

MARIE L'SE PERRIN.
TRAUTMANN-PERRIN.

BOSTON, *Suffolk, ss:*

Subscribed and sworn to this 12th day of August, 1868, before me.

ROBERT B. LINCOLN,
Justice of the Peace.

William H. Towne, 52 Washington street, Boston, Mass., counsel for the petitioners.

4 *English translation of so much of the original statement in French as the petitioners now claim from United States.*

Statement of losses sustained through the destruction of Greytown, C. A., by Madam Maria Louise Perrin, whose temporary establishment at said place as dealer in dry goods, silks, and fancy articles, &c., had been opened in the dwelling No. 2, belonging to Messrs. Wassman & Co., corner of Shephard street, only two months previous to the bombardment and burning of said Greytown, on Thursday, July 13th, 1854, by the United States ship "Cyane," Capt. Hollins, namely:

The selected stock, consisting of silks and other dress goods, fancy articles, plated jewelry, embroideries, mantillas, laces, shawls, cassimeres, cravats, linen and silk handkerchiefs, sewing silk, &c., packed in eighteen large trunks			$21,525 00
All the wines and cordials remaining on hand, together with soda machine, demijohns, decanters, glasses, &c..	$350 00		
Movable store fixtures, such as counters, shelves, &c.	525 00		
		$875 00	
Household furniture, personal property, (clothing and linen,) cooking and kitchen utensils and crockery ..	425 00		
Amount of sales effected on credit and considered as lost, owing to the ruin of the debtors by the catastrophy..	750 00		
		1,175 00	
			2,050 00
Total in gold			$23,575 00

The foregoing account of stock is accurate and true, as certified by the undersigned witnesses, at Greytown, this 14th day of July, 1854.

MARIE LOUISE PERRIN.

EUGENE RILLIEUX, *Clerk.*
JEAN MESNIER.
LEON MANCHO.
HARMON SANDERSON.
Dr. H. SYFRET.
AUG. KNIPPING.
P. TORRES.

5 *Explanations.*

Compelled to abandon this desolated place, and thereby prevented

from being present in case I should be called upon to defend my interest and personally prove my claim, I deem it my duty to submit the following explanatory facts:

My commercial books and papers authenticating my position at the time when I was forced to flee from my store, having (together with all I possessed) fallen a prey to the flames, it is impossible for me, in the absence of these proofs, to produce better evidence or to draw up a more detailed inventory of the merchandise valued in my claim at $21,525, for which reasons I am reduced to the necessity of hereby declaring that the estimates given of the whole stock, and explained as follows, are true extracts (as far as I can remember) of my books, all of which (in case of need) I am ready to affirm on oath.

Besides I can call upon other loyal and disinterested witnesses, (trustworthy persons of Greytown,) who, being in the habit of frequenting my store, unique of its kind in the country, had a perfect knowledge of the existence in it of a quantity of goods at the last moment which preceded the bombardment and burning.

MARIE LOUISE PERRIN.

GREYTOWN, *September* 14, 1854.

6 *Abstract of books, (from memorandums.)*

The twenty trunks of merchandise, consisting of rich dress and fancy goods, and a variety of other articles called "nouveautés," landed May 1st, 1854, by bark "Martha Clark," from New York, amounted to.....	$12,000 00	
And the four large trunks, containing linen, silk dress patterns, ribbons, and plated jewelry, &c., received May 28th, 1854, by steamer "Daniel Webster," via New Orleans, amounted to.....	3,500 00	
Also various articles of fine hosiery and small wares contained in one trunk, valued at.....	500 00	
Our passage, insurance, freight, landing, and carting.....	500 00	
Cost value of both invoices in gold.		$16,500 00

DEDUCTIONS.

Amount of cash sales effected up to June 20th.....	$1,200 00	
" credit " "	750 00	
Net proceeds of sales of $1,500 worth of sample goods taken in seven trunks to Nicaragua.....	3,000 00	
Amount of cash sales from June 21st to July 12th.....	250 00	
Total of sales.....	$5,200 00	

From which amount should be deducted the average net profits realized on the same, say 50°/₀..	2,600 00		
		$2,600 00	
Real cost value of stock on hand July 13th.....		$13,900 00	
To which sum add the profits which would have been made on the sales, about 55°/₀.....		7,625 00	
Total amount, equal to my claim for merchandise, (on the other side,)			$21,525 00
Add to this sum the loss of the various other items mentioned within, and amounting to			2,050 00
The total amount of my claim is, as shown on first page.....			$23,575 00
The petitioners do not now claim—			
1st, for estimated profits on goods destroyed.....		7,625 00	
2d, nor for wines and cordials....	350 00		
3d, nor for store fixtures, &c.....	525 00		
		875 00	
			8,500 00
Claim.....			$15,075 00

MARIE LOUISE PERRIN.
TRAUTMANN-PERRIN.

BOSTON, *August* 12*th*, 1868.

7 *Copy.*

BOSTON, MASS., *February* 10*th*, 1868.

Honorable WILLIAM H. SEWARD,
Secretary of State of the United States, Washington, D. C.

SIR: Early in the summer of 1854, the undersigned, at that time French subjects, arrived at Greytown, C. A., with the intention of establishing a commercial house in some part of that country, having shipped to that port, because it was free, two very valuable invoices of merchandise.

The unsatisfactory condition of political and commercial affairs, and the few social advantages at the time in San Juan del Norte, induced us at once to seek a more quiet location in the interior for the transaction of our business, and the establishment of our house.

With this object in view, Mons. Trautmann-Perrin left Greytown about the middle of June, 1854, with a small assortment of sample goods of the cost value of $1,500 in gold, while Madam Perrin remained alone with the balance of the truly valuable stock which we had opened and offered for sale for the purpose of defraying our expenses.

After an absence of twenty-five days, and after having sold his samples at a large profit, and selected a most advantageous place of permanent residence in Nicaragua, Mons. Trautmann-Perrin, while on his return to Greytown, fully resolved to ship all our effects to Virgin Bay,

was first informed on the river of the bombardment and burning of Greytown on the 13th of July, and the entire destruction of our merchandise, together with books and papers, &c., by the unfortunate event, it having been utterly impossible to remove the same to any place of safety.

A reclamation was promptly made by Madam Perrin, and, through the French minister, duly forwarded to, and filed in, the department at Washington, and a duplicate, with an English translation of the same, is annexed hereto for your information and reference. It is proper to say that as Mons. Trautmann-Perrin was absent from Greytown at the time, and as the property was exclusively under the control of Madam Perrin, the reclamation was subscribed in her own name.

By this sad event the fortune honorably acquired by long years of toil was swept away in a moment, and although since that time nearly fourteen years have elapsed, we have received no compensation or indemnity for our great loss. Many changes have taken place in our condition during that period, in which further misfortunes deprived us of our last resources. We have been induced to take up our residence at Boston, where Mons. Trautmann-Perrin has become a naturalized American citizen. We are both advanced in years, and Madam Perrin is now a confirmed invalid.

Under these circumstances, and impelled thereto by our reduced pecuniary condition, we are moved personally to make this final effort to obtain a settlement of our claim, the government of France having failed to successfully prosecute the same on behalf of her subjects.

8 Firmly believing that our reclamation stands upon a different and more substantial foundation than any other presented, inasmuch as we could not with justice, owing to our limited residence, two months only, be considered as citizens of San Juan del Norte, much less as partisans in the strifes between that town and the transit company, but only as passengers unavoidably detained there; and also indignantly denouncing, as we do and have done at all times, the insult offered to Ex-Minister Borland, we think that the reasons then advanced by the government of the United States for their refusal to make a general settlement of the Greytown claims apply with little or no force to our particular reclamation.

However just our claim may be, we rely entirely upon the generosity of the government of the United States to make us such compensation for our real losses only, ($20,950 in American gold,) as the nature of the case demands. Although we feel confident that some pecuniary satisfaction will ultimately be given by this government to the most deserving of the Greytown sufferers, yet our pressing needs compel us to offer an amicable settlement and release in full to the government upon such terms and for such sum of money as it may see fit in its generous magnanimity to grant us now for our actual loss. We do not ask indemnity, we only ask a pittance that we may be saved from absolute want in our declining years, and that Madam Perrin may be able to seek a climate milder and more conducive to health.

Trusting that the magnanimity of the glorious republic that alone occasioned the injury will be in keeping with her power,

We subscribe ourselves, very respectfully,

MARIE LOUISE PERRIN.
TRAUTMANN-PERRIN.

The undersigned, believing the statement of Mons. and Madam Trautmann-Perrin to be entitled to full credit, would respectfully recommend that some compensation be allowed them by the government of the

United States for the losses sustained by the destruction of their property at the bombardment and burning of Greytown in 1854.

Edward Austin.	J. R. Lowell.	Gridley J. F. Bryant.
John H. Clifford.	Geo. P. Sanger.	Edward Atkinson.
Geo. S. Hale.	E. D. Brigham.	D. D. Stackpole.
Geo. B. Chase.	F. Parkman.	P. Adams Ames.
J. Ingersoll Bowditch.	Cha's Levi Woodbury.	Amos A. Lawrence.
Thornton K. Lothrop.	F. W. Lincoln, jr.	Geo. C. Richardson.
Harvey Jewell.	Emory Washburn.	Nath. B. Shurtleff.
John S. Tyler.	Sam'l G. Ward.	John G. Palfrey.
John H. Reed.	Henry M. Clarke.	E. R. Mudge.
Alex. H. Rice.	Geo. Tyler Bigelow.	S. R. Spaulding.
W. W. Clapp.	Josiah Quincy.	Gerry W. Cochrane.
N. Thayer.	Edward S. Rand.	C. G. Greene.
Fred. U. Tracy.	Henry Lee.	Alex. H. Bullock.
Ja's M. Beebe.	Edm. F. Cutter.	William Claflin.
C. O. Whitmore.	Geo. B. Upton.	Aug. Heard.
Anson P. Hooker.	Thomas Russell.	Edward Russell.
W. M. J. Dale.	Harrison Ritchie.	C. W. Loring.
L's Agassiz.	Chester I. Reed.	Barney Cory.

9 *Copy.*

DEPARTMENT OF STATE,
Washington, February 26, 1868.

Hon. CHARLES SUMNER,
United States, Washington, D. C.

SIR: I have examined the claim, which you commended to the attention of this department, of Mr. Trautmann-Perrin, for damages sustained in the bombardment of Greytown in 1854, by Com. Hollins. It would be a sufficient answer that Mr. Perrin, at the time the injuries were sustained, was a French subject, and that his government has acquiesced in the refusal of the United States to grant any indemnity for the losses of French subjects on that occasion.

The British government, upon the advice of the law officers of the Crown, declared to Parliament its inability to prosecute similar claims. In 1857 Lord Palmerston applied the decision in the case of Greytown as a precedent for refusing compensation to British merchants whose property in a Prussian port had been destroyed by a British squadron during the Crimean war. (See note in Lawrence's Wheaton, p. 145.)

The governments of Austria and Russia have applied the doctrine involved in the Greytown case to the claims of British subjects injured by belligerent operations in Italy in 1849 and 1850. (See note p. 49, vol. 2 of Vattel, Guillaumin & Co's edition, 1863.) We have applied the same principle in declining to make reclamations for citizens of the United States, whose property was destroyed in the bombardment of Valparaiso by a Spanish fleet, and in resisting the claims of subjects of neutral powers, who sustained injury from our military operations in the Southern States during the recent rebe[illegible]. It will probably be found a sufficient answer to the reclamations o[illegible]f our citizens who have sustained losses from belligerent operatio[illegible] both sides during the recent occupation of Mexico by French troops. The principle affirmed is, that one who takes up a residence in a foreign place and there suffers an injury to his property by reason of belligerent acts committed against that place by another foreign nation, must abide the chances of the

country in which he chose to reside, and his only claim, if any, is a personal one against the government of that country in which his own sovereign will not interest himself.

The only discrimination suggested in Mr. Perrin's case, is on account of the very temporary nature of his sojourn at Greytown. I think this cannot affect the principle, which is too valuable in the present circumstances of this country to allow us to waive or impair it.

By no allowed construction of the laws could this claim be paid out of any fund under the control of the department, and the considerations I have stated forbid its recommendation to Congress.

Your obedient servant,
(Signed) WILLIAM H. SEWARD.

(Indorsed:) Marie L. Perrin, Trautmann-Perrin, petitioners, vs. the United States. William H. Towne, 52 Washington street, Boston, Mass., counsel for the petitioners.

10 United States Court of Claims.—December term, 1868.

MARIE LOUISE PERRIN AND TROUTMAN-PERRIN
vs.
THE UNITED STATES. } No. 3592.

The defendants, by their Attorney General, come and demur to the petition of the claimants, filed herein, because the same does not set forth facts sufficient to constitute a cause of action.

Wherefore they ask judgment, &c.

T. LYLE DICKEY,
Assistant Attorney General.

11 In the Court of Claims.

MARIE LOUISE PERRIN AND TRAUTMANN-PERRIN
vs.
THE UNITED STATES. } No. 3592.

And now, to wit, 17th of May, A. D. 1869, the court, upon due consideration of the premises, do sustain the demurrer, and do order, adjudge, and decree that the said claimants' petition be dismissed.

By the court.

12 In the Court of Claims.—Dec. term, 1868.

MARIE LOUISE PERRIN, TRAUTMANN-PERRIN
vs.
THE UNITED STATES. } No. 3592.

To the honorable the Chief Justice and associate justices of the Court of Claims:

The respectful petition of the claimants sheweth—

That your petitioners are advised that the judgment rendered in this case, sustaining the general demurrer to their petition, and ordering their said petition to be dismissed, is erroneous; that the said judgment being a final judgment, and the amount in controversy exceeding the

sum of three thousand dollars, they are advised that they are entitled to prosecute an appeal to the Supreme Court of the United States.

That the said judgment is erroneous in the following particulars:

1. Because on the facts set forth in the petition and admitted by the demurrer, as a question of law, the demurrer should have been overruled.

13 2. Because the facts set forth in the petition showed the destruction of petitioners' property in violation of the law of nations and the Constitution & laws of the United States, whereby an obligation arose upon the part of the United States to indemnify the petitioners.

3. Because under the clause of the Constitution of the United States which prohibits private property from being taken for public use "except on just compensation," an implied contract arose on the part of the United States under the facts of the case as set forth in the petition to pay the petitioners the value of their property destroyed.

Petitioners therefore pray that an appeal may be allowed to them from the final judgment in this case to the Supreme Court of the United States.

And your petitioners will ever pray, &c.

W. W. BOYCE,
Petitioners' Att'y.

Filed in the clerk's office 31st May, A. D. 1869.

At chambers.

Appeal allowed in the case of Marie L. Perrin & Trautmann-Perrin vs. the United States, No. 3592, as prayed by the claimant.

June 1, 1869.

JOS. CASEY,
Ch. J. C't of Claims.

14 In the Court of Claims.

MARIE LOUISE PERRIN, TRAUTMANN-PERRIN
vs.
THE UNITED STATES. } No. 3592.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the claimants, by their att'y, for the allowance of an appeal, as filed in the clerk's office 31st May, A. D. 1869, and of the order of the Ch. Justice of said court, at chambers, allowing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 11th day of April, A. D. 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 442. Marie Louise Perrin and Trautmann-Perrin, appellants, vs. the United States. Court of Claims. Filed 13th April, 1870.

REC. 442—2

Supreme Court of the United States.

MARIA LOUISE PERRIN & TRAUTMAN PERRIN

vs.

THE UNITED STATES.

BRIEF OF APPELLANTS.

W. W. BOYCE,

Counsel for Appellants.

Powell, Ginck & Co., Prs., 632 F St.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1871.

———:-o-:———

MARIE LOUISE PERRIN, TRAUTMAN PERRIN,

vs.

THE UNITED STATES.

No.

———:-o-:———

This is an appeal from the Court of Claims.

The case in the Court of Claims, came up under a general demurrer to the claimants' petition.

The petition states:

1. That, July 13, 1854, the petitioner, Marie Louise Perrin, was the wife of her co-petitioner, and now is.

2. That, July 13, 1854, the petitioners were subjects of the Emperor of the French, but that at the time of filing this petition they were naturalized citizens of the United States.

3. That neither of the petitioners, at any time, were citizens of Greytown, or owed allegiance to, or claimed protection from, the government thereof.

4. That shortly before the 13th of July, 1854, Mrs. Perrin arrived at Greytown, with a valuable invoice of merchandise, to which town her husband had preceded her, with the intention of establishing a commercial house in some part of Central America, having previously shipped to that port because it was free and on the transit to the interior of the five Central American States, a first large invoice of merchandise, which was landed May 1, 1854. That on the arrival of Madam Perrin with the

second invoice, about the middle of June, 1854, her husband left Greytown for the interior of Nicaragua, with samples of their goods, for the purpose of selecting in Nicaragua or Costa Rica, a place at which to locate and establish a commercial house.

5. That while Madam Perrin remained alone in Greytown with the balance of the merchandise, hourly awaiting the return of her husband, to remove all the property to the interior, on the 13th day of July, 1854, the said town of San Juan (Greytown) was bombarded and burnt by the United States sloop-of-war "Cyane," Commander Hollins, and all the merchandise, books, and papers, together with the personal effects of Madam Perrin, were wholly destroyed by said bombardment and burning.

6. That the merchandise burnt was worth $13,900.

Under this state of facts, as set forth in the petition, the question arises whether there is any liability on the part of the United States to make compensation to Madam Perrin for her property destroyed at Greytown.

We submit that there is, and on the following grounds:

1. Because of the clause of the Constitution of the United States which provides that "private property shall not be taken for public use except on just compensation."

In the case of Wiggins *vs.* The United States, (3 Nott & Huntington, p. 412,) the Court of Claims decided, under the above cited clause of the Constitution, that the United States were liable for certain powder destroyed by Commander Hollins at the time of the bombardment of Greytown, the powder belonging to a citizen of the United States, and being stored across the bay from Greytown, at Punta Arenas, and being destroyed to prevent its being used by the inhabitants of Greytown to injure the warehouses of the Transit Company, in which it was stored.

The only circumstances of difference, as we comprehend it, between the petitioners' case and that of Wiggins, consist in the three following particulars:

a. That the powder was located at Punta Arenas.

b. That it was destroyed for the purpose of preventing its being used for mischief, and not for the mere object of willful destruction.

c. That the owner of the powder was an American citizen at the time of destruction, whereas the owner in this case was then a French subject, though now an American citizen.

It is submitted that neither of these points of difference affect the principle of the decision in Wiggins' case.

a. That the powder was located at Punta Arenas it is submitted is immaterial. If the powder had been in Greytown, and destroyed for the same motive, it would not have weakened Wiggins' claim for compensation. There was no merit in having the powder at Punta Arenas. There would have been no demerit in having it at Greytown. Greytown was no prohibited place. It was as lawful to have the powder in Greytown as at Punta Arenas. There had been local disturbances at Greytown, but no such state of facts existed as implied violation of law, or violation of prudence, or violation of any civic duty, in having powder there. No action had been taken by the United States to forbid merchants from depositing their goods at Greytown. No warning had been given them that it was improper or dangerous to do so. No war existed between the United States and the sovereignty over Greytown to make it improper for merchants to use it as a place of deposit for their goods. In every point of view, therefore, the deposit of the powder at Greytown would have been perfectly innocent. It is submitted, then, that if the powder had been in deposit in Greytown, its destruction there would not have prejudiced Wiggins' claim.

b. The particular motive Commander Hollins had for destroying the powder was of no importance. The great

question was, whether the powder was taken for public use. Its destruction was held to be so. Any destruction of private property by Government, in peace, is an act of State, for which officers of Government are not personally liable, is a taking for public use. So, if the powder, from mistake as to ownership, had been destroyed to punish the inhabitants of Greytown, being the same motive for which the bombardment and burning of Greytown took place, the owner of the powder would have been entitled to compensation. See further the case of Grant *vs.* United States, 1 Nott & Huntington, p. 41.

c. The fact that Wiggins was a citizen of the United States does not place him in a better condition than the petitioner. The Constitution says "private property shall not be taken without just compensation," not private property of citizens, but "private property" generally shall not be taken. Surely, an alien doing business in New York would be protected as to his property by this clause. If the property of an alien living in New York would be protected by this clause, so it would be equally protected if he were on the coast of Africa. Amendment VIII to the Constitution provides, that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." No one would suggest that this clause protected only citizens of the United States. All the provisions in favor of the rights of persons or property in the Amendments to the Constitution apply in favor of foreigners as well as of citizens. The "abandoned or captured property act," does not require that a claimant shall be a citizen. It allows "any person" to avail himself of the remedy. Byrnes, case, 3 Nott & Huntington, p. 195. This necessarily results from the nature of our Government, a Government of limited powers, to which certain things are prohibited.

From this resumé, it is submitted that the specific facts of difference above cited, between this case and the case of

Wiggins, do not distinguish the cases in principle from each other.

Hence, it follows, we submit, that the case of Wiggins is authority for this case, and authorizes a judgment in favor of the petitioners in this case.

It is perhaps proper to be noted in this connection, that the petitioners are now naturalized citizens of the United States.

2. Should we be in error in the grounds previously taken, then we submit that the United States are liable in another aspect of the case; that is to say, the bombardment and burning of Greytown were in violation of international law; and as by such violation damage resulted to the petitioners, an implied contract arises on the part of the United States to make compensation.

The Republic can do no wrong. The Government is presumed to act with a good motive. If injury results from its acts, which are in violation of law, to an innocent party, though that party be an alien, and this be done in time of peace, an implied contract arises on the part of the Government to make compensation.

We submit that the bombardment and burning of Greytown was in violation of international law in several regards.

1. Because application should have been first made to Nicaragua for redress.

2. Violation of the neutrality of Nicaragua.

3. Bombardment and burning in violation of the laws of war, even if war existed, which we deny. See Buron *vs.* Denman; Welsby, Hurlston & Gordon; 3 Exchequer R, p. 165, especially letter from Lord Aberdeen, p. 180.

We further submit, that the petitioners were innocently at Greytown is obvious from the statements of the petition.

Mr. Marcy objects to this class of claims, arising out of bombardment of Greytown, because foreigners domiciled in

foreign countries must share with citizens of that country in fortunes of war. 35 Congress, 1st Session, Ex. Doc. No. 9, Dec. 23, 1857.

Mr. Seward takes the same ground; see his letter on the subject cited and relied on by the court below. 4 Nott & Huntington, p. 543.

This general principle of law is admitted, but its applicability to this case is denied, because there was no war existing when Greytown was bombarded.

Greytown was within the territorial limits of Nicaragua. If any war existed, it must have been between the United States and Nicaragua. The United States could not be at war with Greytown, as distinguished from Nicaragua, because war only can exist between different nations; and Greytown was not a distinct nationality.

War could not exist with Greytown, and it did not exist with Nicaragua.

War has certain unfailing characteristics:

a. All commercial intercourse between the citizens of the two nations at war is illegal.

b. The citizens of one nation at war with another have no right to sue in the courts of the other.

c. The ships and products of one nation at war with another may be captured and condemned in prize courts.

d. Treaties are often abrogated.

Measured by these tests, it is plain war never existed between the United States and Nicaragua.

Mr. Webster indeed denied that war existed between the United States and France at the close of the last century, though several acts of Congress authorized limited hostilities. Speech on French Spoliation, 4 vol., Webster's works, p, 163.

If war did not exist when Greytown was bombarded, then the defence set up by Mr. Marcy and Mr. Seward fails, because that defence assumes by necessary implication that war existed, and that the bombardment was in

the exercise of belligerent rights. But if there was no war there could be no exercise of belligerent rights.

It may be said that the petitioners are incompetent to bring this question forward, that Nicaragua alone can complain of the violation of her territory.

This would be true if while war was existing between the United States and France, the property of petitioners, French subjects, had been destroyed within the territorial limits of Nicaragua ; then the petitioners, being enemies, would have had no standing in our courts, and besides they could not complain of the destruction of their property, as the only injury would then have been to Nicaragua. Halleck's Int. Law, p. 531.

But as France and the United States were at peace, this rule does not apply to petitioners' case.

It is submitted that the principle asserted in the case of Martin, Koszta, Dana's Wheaton, p. 142, note, authorizes holding the nation responsible which commits the injury in a foreign jurisdiction.

In view of the facts and law of the case, we conclude that the United States are liable to the petitioners.

W. W. BOYCE,
Appellants' Counsel.

Legal and Historical References.

1. Distinction between war and reprisals.
Wheaton Int. Law, p. 403, sec. 318.

In reprisals, temporary sojourners exempt.
3 Phillimore, p. 72, sec. 23 ; p. 78, sec. 32.
Wheaton, p. 403, sec. 318.

Distinction betewen domiciled persons and visitors is never to be lost sight of.
2 Phillimore Int. Law, p. 25.

2. Person in belligerent country before war ought to be allowed a fair time to disentangle himself.

The Harmony, 2 Robinson's Admiralty R., p. 324.

The Ocean, 2 Robinson's Admiralty R., p. 91.

2 Phillimore's Addenda, p. 14.

3. Protest of United States against burning Washington, and other places.

Am. State papers, 3 vol., pp. 693–694.

Wheaton's opinion as to burning of Washington.

Wheaton, p. 446, sec. 351.

Report of Senate Committee, April 12, 1858, 36th Congress, 15th session, No. 175, vol. 2, 1857–8.

Wanton destruction of enemy's territory illegal.

3 Phillimore, p. 100, sec. 68.

4. Capture in neutral port illegal. Neutral Power has right to claim indemnity.

Stewart's case, 1 Nott and Huntington, p. 115.

All acts of hostility in neutral territory unlawful.

1 Nott and Huntington, p. 117.

5. Every civilized State recognizes obligation to pay for private property taken for public use. Destruction of private property is a taking of it.

Grant's case, 1 Nott and H., p. 41.

6. For injuries done to citizens, resort cannot be had to reprisals, much less to war, until executive and judicial authorities refused redress.

2 Phillimore Int. Law, p. 25 (sec. 5.)

Reply of Great Britain to King of Prussia, cited by Phillimore, *Ib.*, p. 25.

12. If enemy's property be wrongfully seized before the war, it must be restored.

3 Phillimore, p. 141, sec. 136.

13. Mr. Webster, in reference to the attack on the Caroline, in the McLeod case, said that for such an infringement of territorial rights the British Government "must show a necessity of self-defence, instant overwhelming, and leaving no choice of means, and no moment for deliberation;" and that it must further appear the Canadian authorities "did nothing unreasonable or excessive." Lord Ashburton admitted the correctness of this doctrine.

Wheaton, p. 527, sec. 430, note.

Debate in House of Commons.

(Hansard, vol. 146, June to July, 1857, p. 35.)

Lord Claud Hamilton said Hollins demanded $24,000 in default of immediate payment threatened bombardment After only twenty-four hours' delay from time of arrival of ship town was bombarded; two hundred and fifty or three hundred shells thrown in among unarmed inhabitants. Troops landed and town systematically burned. All the houses in the town destroyed. Bombardment 13th July, 1854, in midst of a most inclement season, in midst of severity of tropical torrents. (p. 38; see J. L. White's Letters. *Ib.*)

Viscount Palmerston said bombardment was "a very violent and cruel proceeding." (p. 49.)

Lord Lovaine said he believed it was the first time in the history of civilized nations, of a nation in a time of profound peace not only sending out an armed force to destroy a town, but to destroy property which belonged to the subjects of a Power with which they were at peace. (*Ib.*, p. 43.) He said, "The case is entirely an exceptional one." (*Ib.*)

Disraeli said, "It was not lawful to bombard towns not fortified, and where authorities are established, who,

by treaty, are bound to have neither military or naval resources." (*Ib.*, 50.)

"The forests around Greytown were an impassable marsh" when bombardment took place. (*Ib.*, 51.) "It is impossible that such an outrage as this can go unredressed in the nineteenth century." (*Ib.*)

Lord John Russell called bombardment "a cruel and outrageous action." (p. 56.)

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

MARIE LOUISE PERRIN and TRAUTMAN PERRIN, *Appellants*,
vs
THE UNITED STATES.
No. 211.

Appeal from the Court of Claims.

BRIEF FOR THE THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

MARIE LOUISE PERRIN and TRAUTMAN PERRIN, *Appellants*, *vs.* THE UNITED STATES. } No. 211.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case comes before the court on appeal from a judgment of the Court of Claims dismissing the petition on demurrer. The appellants claim compensation for property destroyed at Greytown, in Central America, by the bombardment of that place by the United States sloop-of-war Cyane, on the 13th of July, 1854. The appellants were then, and still are, French subjects, and it appears by the petition that the French Government declined to press the claims of French subjects for indemnity for property destroyed by that bombardment, and that the claim has likewise been presented

to the Secretary of State by the appellants, and herefused compensation upon the ground that the Government was not liable for such claims.

ARGUMENT.

I.

The petition sets forth no case within the jurisdiction of the Court of Claims. Admitting all that the appellants assert, what they suffered from, was a tort committed by an officer of the United States, and whether his action was approved or disapproved by his Government, the claim is not one "founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States."

10 Stats. at Large, 612.

II.

It is the settled doctrine of this court, that in all political questions (particularly those of a diplomatic character) falling, in the first instance, within the province of the Executive Department of the Government, this court will follow the action of that department, and will not revise its decisions.

Foster *vs.* Neilson, 2 Pet., 253, 309.

Garcia *vs.* Lee, 12 Pet., 511, 516, 517.

Luther *vs* Borden, 7 How., 1.

United States *vs.* Lynde, 11 Wallace, 632, 638, 639, 644.

It is apparent that the claim which the appellants had against the Government was, in the first instance, of a diplomatic character. As subjects of France, it was their duty to apply, as they did, first, to the French Government for redress. That redress was refused by the Government of the United States, upon the ground that a foreigner who chooses to reside in a country where there is war, must take the chances of the country, and if injury is done to his property by acts of war, his only claim is against the Government of the country in which he has resided, and the French Government has acquiesced in that decision. It may well be argued that the appellants are bound by the action of their Government, and cannot pursue their claim against our Government farther; but be that as it may, the decision of the Department of State, not only in regard to the application of the French Government, but likewise upon the personal application of these appellants, made afterwards, when its former decision was reaffirmed, is an adjudication of the rights of the appellants which is binding upon this court. Whether the decision of our Government was strictly conformable to the rules of international law is immaterial, as its own courts must follow it on a question of this kind, whatever the private opinion of the judges as to the justice of the decision may be.

But the decision of Mr. Marcy, and Mr. Seward, in regard to liability of our Government for property destroyed by the bombardment of Greytown seems not

only to have been acquiesced in by Great Britain and France, but to have established a recognized rule of international law, applicable to cases of a similar kind.

Wheaton's Int. Law, by Dana, § 85, note.

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